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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES EDWARD JAMISON,
Plaintiff,

v.

S. HATTON, et al.,
Defendants.

Case No. 19-06015 BLF (PR)

**ORDER OF DISMISSAL WITH
LEAVE TO AMEND**

Plaintiff, a California state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983 against officials and former officials at the Correctional Training Facility (“CTF”) in Soledad and against unknown officials at the CDCR. (Docket No. 1, “Compl.”) Plaintiff’s motion for leave to proceed *in forma pauperis* shall be addressed in a separate order.

DISCUSSION

A. Standard of Review

A federal court must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. *See* 28 U.S.C. § 1915A(a). In its review, the court must identify any

cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. *See id.* § 1915A(b)(1),(2). Pro se pleadings must, however, be liberally construed. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1988).

To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) that a right secured by the Constitution or laws of the United States was violated, and (2) that the alleged violation was committed by a person acting under the color of state law. *See West v. Atkins*, 487 U.S. 42, 48 (1988).

B. Plaintiff’s Claims

Plaintiff claims that Defendants caused him to contract Valley Fever, “a lifelong crippling disease.” (Compl. Attach. at 3(3).) According to Plaintiff, Valley Fever is a parasitic disease caused by exposure to airborne fungal spores of *Coccidioides* organisms found in the soil in certain locations of California; the spores are inhaled following a disturbance of contaminated soil, for example by construction or remodeling projects or dust storms, windstorms and earthquakes. (*Id.*) He claims that around the week of June 20, 2016, he began to experience flu-like symptoms, for which he sought medical attention. (*Id.* at 3(4).) He was diagnosed with Valley Fever on December 19, 2016. (*Id.* at 3(5).) Plaintiff claims that he contracted Valley Fever as a result of construction of a medical facility at CTF’s Central Facility. (*Id.*) Plaintiff claims that neither CTF nor the construction company took preventive measures to ensure that harmful antigens were not released into the air within the facility’s corridors and adjacent building, nor was he provided with any type of facial mask to filter out harmful elements from the air. (*Id.*) Plaintiff claims that the infliction of this lifelong crippling disease amounts to cruel and unusual punishment under the Eighth Amendment. (*Id.* at 3(1).) Plaintiff seeks declaratory relief and damages. (*Id.* at 3(7), 3(8).)

Plaintiff’s attempt to state an Eighth Amendment claim fails for insufficient facts. *Farmer v. Brennan*, 511 U.S. 825, 832 (1994). The treatment a prisoner receives in prison

1 and the conditions under which he is confined are subject to scrutiny under the Eighth
2 Amendment. *See Helling v. McKinney*, 509 U.S. 25, 31 (1993). A prison official violates
3 the Eighth Amendment when two requirements are met: (1) the deprivation alleged must
4 be, objectively, sufficiently serious, *Farmer*, 511 U.S. at 834 (citing *Wilson v. Seiter*, 501
5 U.S. 294, 298 (1991)), and (2) the prison official possesses a sufficiently culpable state of
6 mind, *id.* (citing *Wilson*, 501 U.S. at 297). The requisite state of mind in prison-conditions
7 cases is one of “deliberate indifference.” *See, e.g., Farmer*, 511 U.S. at 834 (inmate
8 safety); *Helling*, 509 U.S. at 32-33 (inmate health); *Wilson*, 501 U.S. at 302-03 (general
9 conditions of confinement); *Estelle v. Gamble*, 429 U.S. 97, 104 (1976) (inmate health).

10 Assuming Plaintiff’s allegations satisfy the first prong for an Eighth Amendment
11 claim, he fails to satisfy the second prong, i.e., that Defendants possess a sufficiently
12 culpable state of mind. Nowhere in the complaint does Plaintiff allege that any of the
13 named Defendants knew that the construction would expose inmates to airborne fungal
14 spores that would result in them contracting Valley Fever, and that Defendants proceeded
15 with the project despite this knowledge. There are simply no factual allegations in this
16 regard to satisfy the subjective requirement for an Eighth Amendment claim. *See Farmer*,
17 511 U.S. at 834. A prison official cannot be held liable under the Eighth Amendment for
18 denying an inmate humane conditions of confinement unless the standard for criminal
19 recklessness is met, i.e., the official knows of and disregards an excessive risk to inmate
20 health or safety. *Id.* at 837. The official must both be aware of facts from which the
21 inference could be drawn that a substantial risk of serious harm exists, and he must also
22 draw the inference. *See id.* An Eighth Amendment claimant need not show, however, that
23 a prison official acted or failed to act believing that harm actually would befall an inmate;
24 it is enough that the official acted or failed to act despite his knowledge of a substantial
25 risk of serious harm. *See id.* at 842. A heightened pleading standard applies to the
26 subjective prong of Eighth Amendment claims: the plaintiff must make nonconclusory
27 allegations supporting an inference of unlawful intent. *Alfrey v. United States*, 276 F.3d

1 557, 567-68 (9th Cir. 2002) (applying standard to *Bivens* Eighth Amendment claim).
2 Plaintiff shall be afforded an opportunity to file an amended complaint to state sufficient
3 facts to support an Eighth Amendment claim.

4 In preparing an amended complaint, Plaintiff should also keep the following
5 principles in mind. Liability may be imposed on an individual defendant under § 1983
6 only if Plaintiff can show that the defendant proximately caused the deprivation of a
7 federally protected right. *See Leer v. Murphy*, 844 F.2d 628, 634 (9th Cir. 1988); *Harris v.*
8 *City of Roseburg*, 664 F.2d 1121, 1125 (9th Cir. 1981). A person deprives another of a
9 constitutional right within the meaning of section 1983 if he does an affirmative act,
10 participates in another's affirmative act or omits to perform an act which he is legally
11 required to do, that causes the deprivation of which the plaintiff complains. *See Leer*, 844
12 F.2d at 633. Accordingly, Plaintiff must allege sufficient facts describing each named
13 defendant's actions or failure to act that caused the violation of his Eighth Amendment
14 rights.

15 Lastly, Plaintiff names "unknown defendants 1-20," referring to as yet unnamed
16 state officials of the CDCR, as defendants in this action. (Compl. Attach. at 3(3).)
17 Although the use of "John Doe" to identify a defendant is not favored in the Ninth Circuit,
18 *see Gillespie v. Civiletti*, 629 F.2d 637, 642 (9th Cir. 1980); *Wiltsie v. Cal. Dep't of Corr.*,
19 406 F.2d 515, 518 (9th Cir. 1968), situations may arise where the identity of alleged
20 defendants cannot be known prior to the filing of a complaint. In such circumstances, the
21 plaintiff should be given an opportunity through discovery to identify the unknown
22 defendants, unless it is clear that discovery would not uncover their identities or that the
23 complaint should be dismissed on other grounds. *See Gillespie*, 629 F.2d at 642;
24 *Velasquez v. Senko*, 643 F. Supp. 1172, 1180 (N.D. Cal. 1986). Accordingly, Plaintiff is
25 advised that should he name any "John Doe" defendants in an amended complaint, those
26 defendants will be dismissed from this action. If, through discovery, Plaintiff is able to
27 identify any unknown defendants, he may then motion the Court for leave to amend to
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1 name the intended defendants and to issue summons upon them. *See Gillespie*, 629 F.2d at
2 642; *Barsten v. Dep't of the Interior*, 896 F.2d 422, 423–24 (9th Cir. 1990).

3
4 **CONCLUSION**

5 For the reasons state above, the Court orders as follows:


6 The complaint is **DISMISSED with leave to amend**. Within **twenty-eight (28)**
7 **days** from the date this order is filed, Plaintiff shall file an amended complaint using the
8 court's form complaint. The amended complaint must include the caption and civil case
9 number used in this order, i.e., Case No. C 19-06015 BLF (PR), and the words
10 "AMENDED COMPLAINT" on the first page. Plaintiff must answer all the questions on
11 the form in order for the action to proceed. Plaintiff is reminded that the amended
12 complaint supersedes the original, and Plaintiff may not make references to the original
13 complaint. Claims not included in the amended complaint are no longer claims and
14 defendants not named in an amended complaint are no longer defendants. *See Ferdik v.*
15 *Bonzelet*, 963 F.2d 1258, 1262 (9th Cir.1992).

16 **Failure to respond in accordance with this order by filing an amended**
17 **complaint in the time provided will result in the dismissal of this action without**
18 **prejudice and without further notice to Plaintiff.**

19 The Clerk shall include two copies of the court's form complaint with a copy of this
20 order to Plaintiff.

21 **IT IS SO ORDERED.**

22
23 **Dated:** January 27, 2020


BETH LABSON FREEMAN
United States District Judge